

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

|                                    |   |                    |
|------------------------------------|---|--------------------|
| <b>MICHAEL MOORE</b>               | ) |                    |
| Claimant                           | ) |                    |
|                                    | ) |                    |
| VS.                                | ) |                    |
|                                    | ) |                    |
| <b>WASTE MANAGEMENT OF WICHITA</b> | ) |                    |
| Respondent                         | ) | Docket No. 253,839 |
|                                    | ) |                    |
| AND                                | ) |                    |
|                                    | ) |                    |
| <b>RELIANCE NATIONAL INS. CO.</b>  | ) |                    |
| Insurance Carrier                  | ) |                    |

**ORDER**

Respondent appealed Administrative Law Judge Nelsonna P. Barnes' Award dated August 15, 2001. The Board heard oral argument on February 5, 2002, by teleconference.

**APPEARANCES**

Claimant appeared by his attorney, John C. Nodgaard. Respondent and its insurance carrier appeared by their attorney, Christopher J. McCurdy.

**RECORD AND STIPULATIONS**

The Board has considered the record and adopted the stipulations listed in the Award.

**ISSUES**

The Administrative Law Judge determined claimant suffered a 15 percent permanent partial impairment of function to the body as a whole. The percentage of functional impairment was based upon a 5 percent impairment to claimant's low back and a 10 percent impairment for scarring to claimant's chin.

Respondent requested review of the nature and extent of claimant's disability, specifically whether claimant was entitled to any impairment for the scar to his chin.

Claimant argues the Administrative Law Judge should be affirmed regarding her Award of permanent partial impairment for the scar to the chin but further argues the percentage of impairment of function for the low back injury should be increased.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, and the stipulations of the parties, the Board makes the following findings of fact and conclusions of law:

Claimant was employed with the respondent as a roll-off driver. A roll-off driver collects different construction containers and takes them to the designated landfills and disposes of the contents.

On March 23, 2000, claimant was involved in an accident. The truck's hoist had raised without claimant's knowledge and when he drove underneath an overpass the raised bed of the truck struck the overpass causing the truck to come to a sudden stop. The claimant had his seat belt on but was still raised into the air and came back down and then hit his chest and face on the steering wheel. Claimant suffered a facial laceration and low back pain.

Claimant was taken to Wesley Trauma Center for treatment and received approximately 42 stitches to his chin. The respondent referred the claimant to Robert L. Wilson, M.D. Dr. Wilson released the claimant back to light-duty work with a 35 pound lifting restriction on March 28, 2000. Claimant had been terminated by the respondent for a safety violation because of the accident. Claimant had received written reprimands for several previous driving accidents while working for the respondent and was terminated for more than three accidents in a year.

As previously noted, the sole issue on review is the nature and extent of disability. The parties agreed there is no claim for a work disability. The Board finds the Administrative Law Judge's Award should be affirmed. The Board finds the Administrative Law Judge's findings and conclusions contained in her award are accurate and appropriate. The Board concludes there is no need to reiterate those findings and conclusions in this Order. Therefore, the Board adopts the Administrative Law Judge's findings and conclusions as its own.

The Board agrees with the Administrative Law Judge's conclusion that the court appointed independent medical examiner, Philip Roderick Mills, M.D., provided a more accurate assessment of claimant's low back impairment and accordingly adopts Dr. Mills' opinion claimant suffered a 5 percent functional impairment based upon the AMA Guides, Fourth Edition, using Category II of the DRE model.

The Board further agrees with the Administrative Law Judge's finding that claimant suffered a 10 percent impairment for scarring and disfigurement to his chin based on the

opinions of Drs. Martinez and Murati. According to the AMA Guides, Fourth Edition, Dr. Murati opined the claimant has a 10 percent whole person impairment. Dr. Martinez also used the AMA Guides, Fourth Edition, in rating the claimant's scar on his face at 10 percent. Conversely, Dr. Mills opined claimant did not sustain any permanent impairment because of the disfigurement because it did not limit the performance of daily living activities.

The claimant's scar on his chin is approximately 2 inches in length and is hypopigmented. It extends from inside claimant's mouth and across the claimant's bottom lip down to the bottom and underneath his chin. Claimant testified the scar is hard and firm to touch. He finds it very difficult to shave around it and the area is numb most of the time. Claimant testified his social life had decreased because every time he goes out he feels like people are staring at him. The claimant's testimony coupled with Drs. Martinez and Murati's opinions persuades the Board that claimant has suffered a 10 percent permanent impairment as a result of the facial scarring and disfigurement.

**AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Nelsonna P. Barnes dated August 15, 2001, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of March 2002.

\_\_\_\_\_  
BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: John C. Nodgaard, Attorney for Claimant  
Christopher J. McCurdy, Attorney for Respondent  
Nelsonna P. Barnes, Administrative Law Judge  
Philip S. Harness, Workers Compensation Director